

**NOTICE OF AGENCY RULE-MAKING ADOPTION**

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 36 Atlantic Herring; 2024 Administrative Update

**CONCISE SUMMARY:** This regulation amends language clarifying the default closing and open dates for spawning closures and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.

**ADOPTED RULE NUMBER:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**EFFECTIVE DATE:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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## DEPARTMENT OF MARINE RESOURCES

### 36.01 Herring Management Plan

#### A. Definitions

(1) Herring.

Herring means Atlantic Sea Herring, particularly the *Clupea Harengus harengus*.

(2) ICNAF gonad stages.

ICNAF gonad stages are the official stages adopted by the International Commission for the Northwest Atlantic Fisheries in 1964.

Excerpt from ICNAF, 1964, Table 2 definitions:

Stage V. Gonads fill body cavity. Eggs large, round; some transparent. Ovaries yellowish; testes milkwhite. Eggs and sperm do not flow, but sperm can be extruded by pressure.

Stage VI. Ripe gonads. Eggs transparent; testes white; eggs and sperm flow freely.

(3) Spawn herring.

Spawn herring is a sexually mature herring (male or female) in ICNAF gonad stages V or VI.

(4) Herring harvester.

Any person or vessel operator in command of any type of gear used to harvest herring.

(5) Management Area 1.

Management Area 1 is all U.S. waters of the Gulf of Maine encompassed by the shoreline and an imaginary line beginning at the intersection of the 41° 35' N parallel with the eastern shore of Monomoy Island; thence along a straight line in a northeast direction to its intersection with the U.S.-Canada boundary at the point 42° 53' 14" N parallel of latitude and 67° 44' 35" W meridian of longitude; thence in a northerly direction along the U.S.-Canada boundary.

Management Area 1 is subdivided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Beginning at 70° 00' W Longitude on the Cape Cod shoreline; thence due north to 42° 38.4' N Latitude, 70° 00' W Longitude; thence due northeasterly to 42° 53.0' N Latitude, 69° 40' W Longitude; thence due northeasterly to 43° 12.0' N Latitude, 69° 00' W Longitude; thence due northeasterly to 43° 40.0' N Latitude, 68° 00' W Longitude; thence due northeasterly to 43° 58.0' N Latitude 67° 22' W Longitude at the U.S.-Canada boundary; thence northerly along the irregular U.S.-Canada boundary.

(6) Management Area 2.

South Coastal Area: All waters west of 70 ° 00' W Longitude and south of 41 ° 35' N Latitude, to include state and Federal waters adjacent to the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(7) Management Area 3.

Georges Bank: All U.S. waters east of 70° 00' W Longitude and southeast of the line that runs from a point at 70° 00' W Longitude and 41° 35' N Latitude, northeasterly to the Hague Line at 67° 44' 35" W Longitude and 42°53' 14" N Latitude.

(8) Herring Dealer.

Any person who purchases herring directly from a herring harvester for other than their own use and then sells the herring as a wholesale or retail product.

(9) "GSI" means the gonadosomatic index calculated by the following formula:

$(\text{Gonad Weight} / \text{Total Body Weight} - \text{Gonad Weight}) \times 100$  percent.

(10) Spawning Sample.

Sample means a batch of 100 adult herring taken randomly from commercial catch or fish surveys.

(11) Landing.

To come to shore, float or a dock and offload herring; or to transfer herring at sea to a vessel utilizing the herring for bait.

Exception: Fixed gears may transfer at sea to a vessel utilizing the herring as bait.

## B. Permits and reporting

(1) Dealer Permit.

All herring dealers shall obtain a herring dealers permit as part of the Wholesale Seafood License issued by the Department of Marine Resources. There will be no additional charge for this permit. The Commissioner may require that dealer permit holders report volumes of herring bought and sold and other information as required.

(2) Herring Harvester Permit

All herring harvesters must possess a Herring Harvester Permit on their Commercial Pelagic and Anadromous Fishing License issued by the Department of Marine Resources.

(3) Reporting of catch

~~All harvesters must submit trip level catch reports by 11:59 pm daily through an approved electronic option.~~

All harvesters must report all landed or retained fish daily to the Department via an approved electronic reporting option by 11:59 PM the day of landing or retention. If no landings or retention occurred on a calendar day, a negative report is required.

Harvesters: See Chapter 8.20(Q) and 8.20(R)

Dealers: See Chapter 8.10 Landings Program

## D. Catch restrictions.

License holders shall be informed by public notice in a newspaper circulated in the area affected of any restrictions herein.

(1) Spawning herring protection.

It shall be unlawful to fish for, take, possess, transfer or land in any State of Maine port or facility, or to transfer at sea from any Maine registered vessel, any catch of herring harvested from the following described areas within Management Area 1A during a spawning area closure:

(a) Spawning Area Boundaries:

Eastern Maine Spawning Area means:

All waters bounded by the following coordinates:

Maine coast            68° 20.0' W,  
43° 48.0' N            68° 20.0' W,  
44° 25.0' N            67° 03.0' W,  
North along the U.S./Canada border, terminating at the Lubec International Bridge.

Western Maine Spawning Area means:

All waters bounded by the following coordinates:

43° 30.0' N            Maine coast,  
43° 30.0' N            68° 54.5' W,  
43° 48.0' N            68° 20.0' W,  
North to Maine coast at 68° 20.0' W.

Massachusetts/New Hampshire Spawning Area means:

All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and 43° 30.0' N 70° 00.0' W.

(b) Closure Timing. To protect spawning sea herring, the commissioner shall close the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas to directed Atlantic herring fishing effort when it is determined that Atlantic herring are in later stages of maturity just prior to spawning. A closure date will be projected based on a formula and process set forth in the Atlantic States Marine Fisheries Commission's Amendment 3 (Section 4.2.6) Interstate Fishery Management Plan for Atlantic Herring.

- i. Closure Duration. Once the closure is enacted, it shall remain in effect for 42 days.
- ii. Closure Extension. Sampling of Atlantic herring taken from Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas shall begin during the last week of the initial closure period or at the end of the initial closure period. If one sample taken from the Eastern Maine or Western Maine Spawning Areas is comprised of 20% or more spawn herring then the closure may be extended for an additional 14 days.
- iii. Closure Prohibitions. During the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area Closure or an extension thereof, it shall be unlawful for any vessel to possess or land more than 2,000 pounds of sea herring caught within the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area.
- iv. Closure Procedure. The initial closure date shall be announced 5-days prior to the closure being enacted and any closure extension shall be announced

immediately to be enacted the day following the announcement.

- v. Default Closure Date Ranges: If sufficient samples are not available, spawning area closures will begin and end on area specific dates as follows: Eastern Maine (August 28 – October 8), Western Maine (September 23 – November 3), Massachusetts/New Hampshire (September 23 – November 3)

(c) Exemptions

- i. Transport. Any herring vessel having onboard herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed or restricted area and land at a Maine port, only if all of its fishing gear has been stowed.
- ii. Fixed gear. The fixed gear (stop seines and weirs) fishery east of Cutler is exempt from spawning area restrictions.

(2) Catch quota

Fishing for herring in Management Areas 1A, 1B, 2 and 3 is subject to the sub-annual catch limit (ACL) and fishing effort restrictions specified by the ASMFC Atlantic Herring Board and the NEFMC in accordance with their respective Fisheries Management Plans (FMP). The ACL is established annually by July 1 for the following year by ASMFC and NEFMC. Any reduction in the harvest will be determined in consultation with the ASMFC and NEFMC. No person shall land herring taken from a management area when 92% of the area's seasonal or sub-annual catch limit will be exceeded or if 95% of the coastwide annual catch limit will be exceeded.

- (a) Exception. Up to 30 mt of the Area 1A sub-ACL is allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) west of Cutler. This set-aside is available for harvest by fixed gear within the fishing year until the fixed gear set aside is fully utilized. No person shall land herring taken from Area 1A with fixed gear when 92% of the fixed gear set-aside portion of the Management Area 1A sub-ACL will be exceeded.

(3) Effort Restrictions

- (a) Management Area 1A, January 1 – May 31

For the period of January 1 through May 31, 0% of the sub-ACL is allocated annually. Herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). ASMFC designates zero landing days between January 1 and May 31, annually.

- (b) Management Area 1A, June 1 – December 31

For this period, 100% of the sub-ACL is allocated annually and further sub-divided into two seasonal periods. Season 1 is June 1 through September 30 and is allocated 72.8% of the sub-ACL. Season 2 is October 1 through December 31 and is allocated 27.2% of the sub-ACL. Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the ASMFC. All vessels landing herring caught in Season 1 of Management Area 1A in any Maine port will be limited to fishing for and landing herring on days that have been designated landings days by the ASMFC. All

vessels landing herring caught in Season 2 of Management Area 1A in any Maine port will be limited to landing herring on days that have been designated as landing days by ASMFC.

All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6 pm to 6 pm).

- i. For the purpose of this subsection, the following terms shall be defined as follows:

“At-Sea Transfer”: to transfer herring from a vessel to another vessel before the harvester vessel has landed.

“Harvester vessel”: a purse seine vessel that is required to report the catch it has aboard (along with effort data under a gear code other than CAR) as the harvesting vessel on its Federal Vessel Trip Report.

“Carrier vessel”: a vessel that has received herring from another vessel and is not required to report that catch as its own on its Federal Vessel Trip Report; and, not rigged as a purse seine vessel.

“Purse seine vessel”: a vessel currently rigged and capable of harvesting fish with an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear to set, purse and haul such a net, which may include, but not limited to, a hydraulically-driven block, roller gear, and/or skiff.

“Truck”: a truck, as a unit of measurement, is equal to 40,000 lbs.

- ii. Harvester vessels:

(A) For all harvesters issued a state Commercial Pelagic and Anadromous license with a Herring Harvester Permit that do not possess a Federal Limited Access Herring Permit:

~~All harvester vessels may possess and land Atlantic herring four days a week, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday. No vessel may land, take or possess more than 25,000 lbs per week. No permit holder may land, take or possess more than 25,000 lbs per week.~~

Exception: Harvesters using fixed gears (fishing weirs, stop seines), ~~and pound nets~~ and pound nets are not subject to the harvest schedule detailed above. Weekly landing limits apply.

(B) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category A:

The permit holder must have declared into the Atlantic Herring fishery by April 15th, annually, to be eligible to harvest.

(C) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category C:

Daily trip limit shall not exceed 55,000 lbs per day.

(D) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category D:

Daily trip limit shall not exceed 6,600 lbs per day.

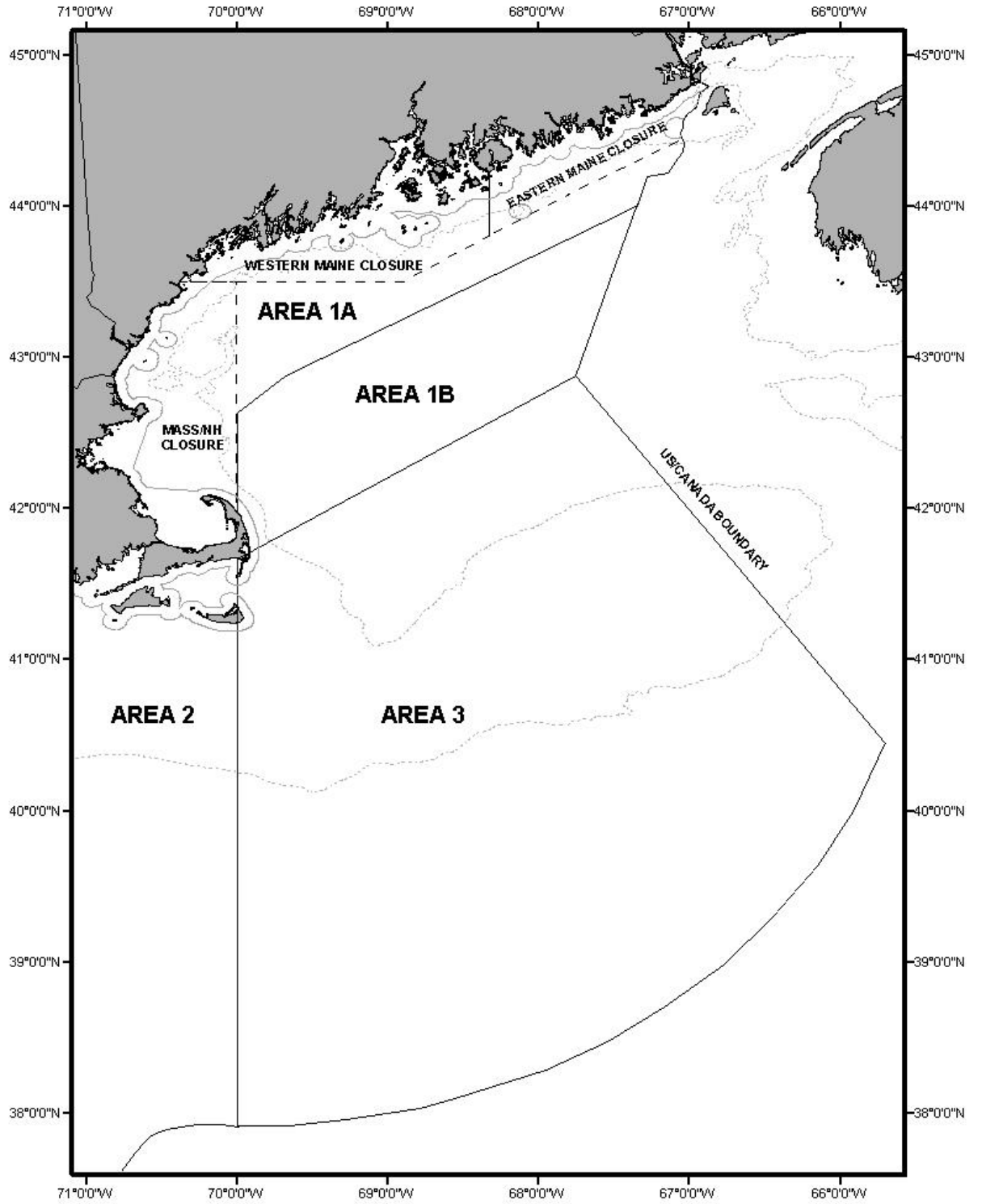
iii. Carrier Vessels:

Carrier vessels shall not operate as a harvester vessel on the same trip when operating as a carrier vessel.

(c) Exceptions.

Any vessel may possess herring as an incidental catch and land herring caught in Management Area 1A, 1B, 2 or 3, in any Maine port, as long as such herring do not comprise more than 10% of the total weight of the catch and not to exceed 2000 lbs per trip.

An individual may fish or take by hook and line up to 100 Atlantic herring per day for personal use only.





## **Basis Statement**

This regulation amends language clarifying the default closing and open dates for spawning closures, and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.

Based on comments received, the Eastern Maine spawning closure has been amended to recognize the terminus at the Lubec International Bridge for clarity.

## **Summary of Comments**

Notice of the proposed rulemaking appeared on January 24, 2024, posted to DMR's website and also printed in the five major daily newspapers as published by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR's rulemaking notices and sent to herring industry members who provided their email address to DMR. No public hearing was held.

The comment period closed February 26, 2024.

## **DMR received the following written comments:**

### **Darren Turner, Charlotte, ME**

#### **1. Spawning closure date clarification:**

I can't support clarifying the dates because I don't support a six-week spawning closure. Zero fishing spawning closures do not conserve fish the way managers think they do. For example, when Eastern Maine closes (to conserve fish) the boats go to western Maine to fish. There, they catch fish pre spawn. How many eggs are the fish they catch going to spawn and fertilize during the Western Maine spawning closure? Zero, because they are dead before the spawning closure even begins. Yet, managers think they conserved fish. The same amount of fish are harvested, which is equal to the Allowable Catch Limit. They even extended the closures from four to six weeks. A six-week closure is excessive and takes too much of a short season away from us. We used to have a 20% tolerance for spawn herring. The tolerance allowed us to continue fishing in our communities. We don't see fish in downeast Maine until a few weeks before the spawning closure. We lose the best six weeks of the season, then, after the closure ends the weather is bad and the quota is sometimes entirely caught. This leaves only a two to four-week opportunity. This resource gets caught in the west and they get the economic benefit. Again, fish are not conserved with this rule. The Magnuson Stevens Act set standards that management measures must conserve fish stock and give the fisherman the maximum yield. It also prohibited discriminating between regions.

2. The one landing day per 24 hours rule is redundant since we have a weekly catch limit. Some vessels are small, they have small nets, make small sets and can't carry much volume of fish. We need to take multiple trips for safety. It would be more economical and efficient to make multiple trips per day. Maybe an exemption for boats less than 50' would give some flexibility and keep some managers happy. Most herring regulations have the large fleet in mind when they are implemented.

3. The weekly landing limit, for “state only” permitted boats, needs to grow with the quota as it is increased. The weekly limit is already falling behind and should be based on the 2022 ACL of 1045 MT. Proportional to 2022 catch limits, state only boats weekly limits should be up to 80,000 pounds per week. State only boats were never limited on their catch until the quota cuts got out of hand. I used to target 125,000 pounds per night. That historical practice has been taken from me but should be returned as quotas increase. We only have two to four weeks per year of good fishing. Historically we made our annual income in short bursts. There is no reason that the weekly limits should remain at the minimum while the federal permitted boats get catch increases. Both sectors had catches decrease with the quota, so both should see catches increase with the quota. The weekly limit should be abolished in the future if the quota gets above a certain threshold.

4. The Eastern Maine Spawning Closure boundary needs to be clarified to:

“Eastern Maine Spawning Area means:

All waters bounded by the following coordinates:

Maine coast 68° 20.0' W,

43° 48.0' N 68° 20.0' W,

44° 25.0' N 67° 03.0' W,

North along the U.S./Canada border to the Lubec International Bridge.”

This is for clarification. This is already the historic understanding. There are zero spawning grounds in the Cobscook bay area. The fish are just under the maturity age to spawn and are 8’ to 9’ in length. The bay is shared with Canadian fishermen who continue fishing the same schools as they move back and forth across the border with the tide. They then sell the fish to Maine Lobstermen.

### **Earl Small, Eastport, ME**

Couple of Changes I’d like to see is state Quota increased to 50,000 Lbs. The federal quota increased from 240,000 Lbs to 320,000 Lbs last year and they haven’t had a meeting to see what the increase will be for FY24. The overall quota will increase this year again.

1: Harvester Vessels:

A) For all harvesters issued a state Commercial Pelagic and Anadromous license with a Herring Harvester Permit that do not possess a Federal Limited Access Herring Permit: No vessel may land, take or possess more than ~~25,000~~ **50,000** lbs per week. No permit holder may land, take or possess more than ~~25,000~~ **50,000** lbs per week.

Under Eastern spawning area the ASMFC has the ending of the area in the Lubec Narrows ( 44 50’29” N 66 58’29” W, ) this isn’t clear on the state regulations so I’m proposing the following to clear this up:

2: Eastern Maine Spawning Area means:

All waters bounded by the following coordinates:

Maine coast 68° 20.0' W, 43° 48.0'

N 44° 25.0' N 68° 20.0' W, 67° 03.0' W,

North along the U.S./Canada border to 44 50'29" N 66 58'29" W

**DMR Response:**

*Spawning Area Closures and Spatial Designations*

Under the Atlantic States Marine Fisheries Commission (ASMFC) Herring FMP, the coordinates listed within Amendment 3 of the Interstate Fishery Management Plan for Atlantic Herring are the same as listed within Chapter 36. However, it is correct that the spatial designation for the Downeast spawning area does not include Cobscook Bay or the St. Croix River; it is for the outside shore only. In response to this comment, the rule has been amended to make this clarification.

Also within the ASMFC's ISFMP for Atlantic Herring are the spawning closures and the procedures established to trigger those closure periods. While the closures have not been interactive in the last several seasons due to low quotas and thus low fishing effort that has limited sampling opportunity, that is not to say that in the future they could not be re-evaluated. The transition from 4-week to 6-week closures was the result of long-term port side sampling still finding evidence that landed herring were not yet complete with the spawning cycle. And thus, having to extend closures by 2 additional weeks. The 20% spawning tolerance originally used as a prevention measure for the harvesting of spawning fish was discontinued due to the difficulty with monitoring and enforcement. Recent conversations about this method of spawning protection highlighted that monitoring and enforcement issues would still exist today.

*State Only Harvest of Atlantic Herring*

Atlantic herring specifications for the 2024 harvest year were released during this rulemaking. The fishery effort specifications, determined through the Days Out Program, are set during the month of April. Preliminary final landing reports for state waters fishery were also assessed during this rulemaking. After completing additional data analysis, the Department could potentially revisit the state harvest weekly landing limit during the next rulemaking cycle and any changes could become effective during the 2024 harvest season.

*Daily Landing/ 24-hour Trip*

Recognizing that Maine's state waters herring fishery operates under the ASMFC Atlantic Herring FMP and that Atlantic herring is also federally managed by the New England Fishery Management Council FMP, there are reporting and monitoring requires for all shared waters. While the federal fishery would have daily VMS hails to report anticipated landings, the daily state waters reporting is required for quota monitoring.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 36 Herring; 2024 Administrative Update

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: February 26, 2024

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

This regulation amends language clarifying the default closing and open dates for spawning closures, and strikes language within section D(3)(b)(ii)(A) as all harvest schedules are updated annually through the ASMFC Days Out Program. It clarifies that reporting requirements apply to all fish landed or retained.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

This proposed rule is intended to align state regulation with current federal fisheries management plans and provide improved clarity.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

The ASMFC Atlantic Herring Board took final action on October 16, 2023, to set quota management periods for the 2024 fishing year.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[see §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [see §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used*